THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18168 of 2007

Date : 12-11-2007

Between :

M/s. Kandukuri Oil Industries Pvt.Ltd.
Represented by its Managing Director
K.Ramulu .. Petitioner

And

The Authorised Officer,
Stressed Assets Management Branch,
S.B.I., 1-1-78, R.P. Road,
Near Secunderabad Head Post Office,
R.P. Road,
Secunderabad
And another ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18168 of 2007

ORDER:

1. The Writ Petition is filed for a writ of certiorari calling the entire records pertaining to the loan transaction of the petitioner company and quash the impugned notice No.10509450153 dated 29-5-2007 issued by the 1st respondent which is illegal, irregular and contrary to law, against the principles of natural justice and to pass such other suitable orders.

2. It is stated that the petitioner-company availed working capital loan facility of Rs.2 crores from the respondent-Bank after executing security documents dated 23-11-1998 and also furnished personal guarantees of Sri K.Ramulu, Sri K.L.N. Prasad, Smt.K.Rajyalakshmi, Sri K.Vidya Sagar, Smt.K.Rukmini and Sri K.Ravindra Prasad and at the prevailing rates, the value of the assets is about Rs.15 Crores. It is further stated that originally the petitioner-company was promised

a total loan of Rs.7 Crores by the respondent-Bank while only Rs.2 Crores was released causing hardship and scarcity of working capital as a result of which the day-to-day operations of the petitioner-company were badly affected due to non-release of the balance amount of loan by the respondent-Bank and thus resulted into the petitioner-company becoming defaulter in repayment of the actually released loan amount of Rs.2 Crores. It is also further stated that meanwhile the respondent-Bank filed a suit O.A.No.02/2000 in Debt Recovery Tribunal, Hyderabad for recovery of the outstanding amount from the petitioner-company. The petitioner-company also filed a counter-claim against the respondent-Bank and both the matters are still pending before the Debt Recovery Tribunal, Hyderabad. It is also further stated that as the things stood thus, the respondent-Bank indulged in arm-twisting tactics such as calling personally and on telephone at odd hours and threatening of dire consequences and sending anti-social elements posing as collection-agents of the respondent-Bank. They also issued a letter No.SAMB/CO-PARCENER/1101 dated 21-9-2006 and in the said letter, the respondent-Bank without furnishing any details or following the legal procedure stated in para No.2 as follows:

"Consequently, we have put us the advance for

sale to third party and two of the parties have already conducted due diligence. Under the circumstances, bank may be in a position to examine your proposal only in case you are agreeable to improve the offer to the extent of reliazable value of available security."

It is further stated that as aforesaid the current market value of the mortgaged property is about Rs.15 Crores and the respondent-Bank with ulterior motives wanted to either grab the entire property or sell the same to its chosen parties. Aggrieved by such capricious attitude of the respondent-Bank, the petitioner-company knocked the doors of this Court for justice by filing W.P.No.23077/2006 and after hearing both the sides, this Court by its interim order dated 15-11-2006 directed the respondent-Bank not to proceed against the mortgaged properties of the petitioner-company without following the due process of law. The said direction was made absolute on 12-7-2007 when this Court finally disposed of the said Writ Petition. Further it is stated that during the pendency of W.P.No.29391/2006, the respondent-Bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 54 of 2002, vide A/c.No.105094501563

dated 29-5-2007. The said statutory notice flatly demanded a sum of Rs.9,96,41,771/- only without furnishing any particulars as is required under Section 13(3) of the said Act. The petitioner-company objected to the issuance of such a notice on several legal and Constitutional grounds by its letter dated 28-7-2007 and in turn without considering the valid objections raised by the petitioner-company in its reply dated 28-7-2007, the respondent-Bank mechanically and casually brushed aside all the objections without giving any cogent reasons therefor. Certain grounds also had been raised in the affidavit filed in support of the Writ Petition.

3. In the counter affidavit filed on behalf of the respondents, in reply to paras 2 to 4 of the affidavit it is stated that the petitioner-company availed capital loan facility of Rs.200 lakhs from the State Bank of India, Commercial Branch, Hyderabad after executing security documents on 23-11-1998 and furnishing personal guarantees of Sri K.Ramulu, Sri K.L.N.Prasad, Smt.K.Rajyalakshmi, Sri K.Vidyasagar, Smt.K.Rukmini and Sri K.Ravindra Prasad and also creating equitable mortgages over the immovable properties. It is further stated that as the petitioner-company committed default in repaying the loan amounts to the Bank, the Bank had filed O.A.No.2/2000 on 2-2-2000 before the Debts Recovery

Tribunal, Hyderabad for recovery of a total debt of Rs.3,17,96,455-13 ps. together with future interest and costs. The petitioner also filed a written statement and also counter-claim against the Bank and the Bank filed a rejoinder opposing the said counter-claim. Further it is stated that the evidence of the Bank was closed on 10-1-2003 in the said O.A. and the case was posted to 6-2-2003 for the evidence of the petitioner and the petitioner deliberately avoiding to lead evidence. The matter was adjourned by the Debts Recovery Tribunal, Hyderabad many times at the request of the petitioner and now the case is pending disposal before the Debts Recovery Tribunal, Hyderabad. It is also further stated that the allegation of the petitioner that the respondent-Bank had promised to release at least Rs.7 crores loan to the petitioner-company is not correct and the said allegation is denied. The request for sanction of the loan was appraised and considered by the Bank and a loan of Rs.2 Crores was sanctioned to the petitioner-company on 21-11-1998. The said loan was availed by the petitioner after executing security documents and furnishing immovable property securities and personal guarantees of Sri K.Ramulu, Sri K.L.N. Prasad, Smt.K.Rajyalakshmi, Sri K.Vidyasagar, Smt.K.Rukmini and Sri K.Ravindra Prasad.

In reply to paras 5 to 8 of the affidavit, it is stated that the petitioner-company failed to honour the terms of one time settlement offered by the respondent-Bank and committed default in paying the amounts as stipulated under the one time settlement scheme. Therefore, the respondent-Bank having no other alternative, issued the proceedings dated 21-9-2006 cancelling the one time settlement offer and much time also had been granted to the petitioner for repayment of the loan amount even under the terms of one time settlement scheme. The petitioner deliberately had not repaid the amounts to the respondent-Bank and is a wilful defaulter. It is also further stated that the respondent-Bank is entitled to proceed further for recovery of the debt from the petitioner by availing the remedies provided under Securitization & Reconstruction of the Financial Assets & Enforcement of Security Interest Act 2002, in short hereinafter referred to as “Act” for the purpose of convenience. Earlier, the petitioner filed W.P.No.23077/2006 before this Court and the said Writ Petition was disposed of on 12-7-2007 with a direction to the respondent-Bank not to proceed against the petitioner-company without following due process of law. The allegation of the petitioner that the respondent-Bank had not followed the due process of law in proceeding with the recovery under the Act is not correct and the said

allegation is denied. The notice dated 29-5-2007 was issued under Section 13(2) of the said Act giving all the details under sub-section (3) of Section 13 of the said Act which particulars were furnished to the said notice dated 29-5-2007 as Annexures A to C. The petitioner sent objections dated 28-7-2007 and a reply dated 21-8-2007 also was sent by the respondent-Bank to the objections raised by the petitioner. No illegality whatsoever is committed by the respondent-Bank in issuing the notice dated 29-5-2007 under Section 13(2) of the Act and the proceedings initiated for recovery of the debt are lawful and valid. It is also further stated that the proceedings initiated by the respondent-Bank under the Act for recovery of the debt against the petitioner are maintainable even during the pendency of the application O.A.No.2/2000 before the Debts Recovery Tribunal, Hyderabad in the light of the Judgment of the Apex Court i n *M/s.Transcore Vs. Union of India and another* (AIR 2007 SCW 389). Further, the Act is also made applicable for recovery of the debts due as on the date of enforcement of the Act and the debt due from the petitioner is covered by the said Act. Further, the petitioner even without paying the amount towards debt to the respondent-Bank is raising all untenable grounds and

is protracting the litigation. The loan of Rs.2 Crores was advanced during the year 1998 and already about 9 years period had elapsed and the petitioner failed to pay the debt to the respondent-Bank. There are no merits in the Writ Petition and the Writ Petition is liable to be dismissed.

4. The impugned notice dated 29-5-2007 reads as hereunder:

STATE BANK OF INDIA
Stressed Assets Management Branch, 1-7-78,
Near Secunderabad H.P.O., R.P. Road,
Secunderabad-500003.

WITHOUT PREJUDICE

A/c.No.10509450153 Dated : 29-5-2007

To
Kandukuri Oil Industries Pvt.Ltd.
4-3-58/8-G & 4-3-58/8-G1,
Bhaisa,
Adilabad District, A.P.

Dear Sir(s),
Sub: NOTICE UNDER SECTION 13(2) OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 54 OF 2002 (HEREINAFTER CALLED 'ACT')

At your request, you have been granted by the Bank, through its Commercial Branch, Hyderabad from time to time, various credit facilities byway of financial assistance against various assets creating

security interest in favour of the bank. As you know, the loan accounts are now parked by the Bank at its Stressed Assets Management Branch, Secunderabad. The relevant particulars of the said credit facilitie4s and the security agreement(s)/document(s) executed by you are stated in Schedule “A” and Schedule “B” respectively excluding pledge of movables. You have availed the financial assistance with an undertaking for repayment of the said financial assistance in terms of the said agreement(s)/document(s).

You have also created mortgage by way of deposit of title deeds/registered mortgages creating security interest in favour of the Bank. The documents relating to such mortgage are also stated in Schedule “B”.

The relevant particulars of the secured assets are specifically stated in Schedule “C”.

You have also acknowledged subsistence of the liability in respect of the aforesaid credit facilities by executing confirmation of balances and revival letters and other documents from time to time. The operation and conduct of the above said financial assistance/credit facilities have become irregular and the debt has been classified as non-performing asset in accordance with the directives/guidelines relating to asset classifications issued by RBI consequent to the default committed by you in repayment of principal debt and interest thereon.

The said Financial assistance is also secured by the personal guarantees of (1) K.Ramulu s/o.K.Yellaiah, (2) K.L.N. Prasad s/o.K. Ramulu (3) K.Rajalakshmi w/o.Ramulu, (4) K.Vidyasagar s/o.K.Ramulu, (5) K.Rukmini w/o. K.L.N. Prasad, (6) K.Ravindra Prasad s/o. K.Ramulu. Despite repeated requests, you have failed and neglected to repay the said dues/outstanding liabilities.

Therefore, the Bank hereby calls upon you U/s.13(2) of the said Act by issuing this notice to discharge in full your liabilities stated hereunder to the Bank within 60 days from the date of this notice. Your outstanding liabilities (in aggregate) due and owing to the Bank is in the sum of Rs.9,96,41,771/- (Rupees Nine Crores Ninety Six Lakhs Forty one thousand Seven Hundred and Seventy One only) as on 31-3-2007. You are liable to pay future interest at the contractual rate on the aforesaid amount together with incidental expenses, costs, charges etc., + interest from 1-4-2007.

If you fail to repay to the Bank the aforesaid sum of Rs.9,96,41,771/- (Rupees Nine Crores Ninety Six Lakhs Forty one thousand Seven Hundred and Seventy One only) with further interest and incidental expenses, costs, as stated above in terms of this notice u/s.13(2) of the Act, the Bank will exercise all or any of the rights detailed under sub-section (4) of Section 13 and under other applicable provisions of the said Act.

You are also put on notice that in terms of sub-section 13 of Section 13, you shall not transfer by sale, lease, or otherwise the said secured assets detailed in Schedule “C” of this notice without obtaining written consent of the Bank.

The Bank reserves its rights to call upon you to repay the liabilities that may arise under the outstanding Bills Discounted, Bank Guarantees and Letter of Credit issued and established on your behalf as well as other contingent liabilities.
The notice is without prejudice to the Bank’s right to initiate such other actions or legal proceedings, as it deems necessary under any other applicable provisions of Law.

For STATE BANK OF INDIA

Sd/-
AUTHORISED OFFICER

5. The aforesaid notice is impugned on the ground that the same is bad since the same subject matter is pending before the Debt Recovery Tribunal, Hyderabad in O.A.No.02/2000. As far as the proceedings with simultaneous remedies are concerned, there cannot be any tenable objection relating to the same. As far as the following of due process of law is concerned, this Court is of the considered opinion that the respondents would follow the procedure as ordained by the provisions

of the Act aforesaid and hence it cannot be said that the prior directions made in W.P.No.230/77/2006 cannot be said to have been violated since as can be seen from the stand taken in the counter affidavit, the steps are being followed by the respondents. This Court does hope that the further steps to be taken by the respondents would be in accordance with the procedure as contemplated by the provisions of the Act aforesaid. Except making this observation, no other relief can be granted in favour of the writ petitioner in the facts and circumstances of the case.

6. In the light of the above observations, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

Date : -11-2007

L.R. copy to be marked : YES / No

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